

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PETITION FOR
REQUEST FOR VARIANCE FROM
REGULATIONS AT 20.6.6 NMAC,
IRONHORSE PERMIAN BASIN,
LLC, DISCHARGE PERMIT
RENEWAL FOR CLOSURE DP-796,**

WQCC No. 20-72 (V)

Ironhorse Permian Basin, LLC,

Petitioner.

**CORRECTED ORDER GRANTING WAIVER OF NINETY-DAY DEADLINE,
SCHEDULING HEARING ON VARIANCE REQUEST,
AND APPOINTING HEARING OFFICER**

THIS MATTER having come before the Water Quality Control Commission (“Commission”) during its regularly scheduled meeting on January 12, 2021, on the unsigned Variance Request before the Commission (“Variance Request”) filed on October 22, 2020 by Glorieta Geoscience, Inc., as consultant for Petitioner Ironhorse Permian Basin, LLC (“Petitioner”), the Response to Variance Petition filed on December 24, 2020 (“Response to Variance Petition”) by the New Mexico Environment Department (“Department”), and the Joint Motion to Request Hearing Scheduling and Waiver of 90-Day Hearing Deadline filed on January 5, 2021 by the Department and Glorieta Geoscience, Inc. (“Joint Motion”); Christopher Atencio appearing on behalf of the Department, and Steve Jetter, Sr., Environmental Geologist, appearing as consultant for Petitioner; and the Commission having heard from the respective representatives of the parties, and having duly considered the Variance Request, Response to Variance Petition, and Joint Motion, **FINDS:**

1. Glorieta Geoscience, Inc. submitted the Variance Request on behalf of Petitioner,

pursuant to the requirements in 20.6.2.1210(A) NMAC, which in part provides: “Any person seeking a variance pursuant to Section 74-6-4(H) NMSA 1978, shall do so by filing a written petition with the [C]ommission.”

2. The variance sought by Petitioner is from compliance with the “Dairy Rule” permitting requirements at 20.6.6.30(A)(1)(c), (e) and (f) NMAC. *See*, 20.6.6.7(B)(8) NMAC; Par. 6, pg., 2 of Variance Request.

3. 20.6.2.1210(B) NMAC reads: “The variance petition shall be reviewed in accordance with the adjudicatory procedures of [20.1.3 NMAC].”

4. The relevant part of 20.1.3.7(A)(22) NMAC defines “variance hearing” as “a proceeding before the [C]ommission initiated by the timely filing of a variance petition filed pursuant to ... 20.6.2.1210 NMAC.”

5. 20.1.3.18(A)(1) NMAC states that a “[v]ariance hearing shall be initiated by the filing of a variance petition.” Further, under 20.1.3.18(A)(3) NMAC, “[t]he Department shall review each variance petition and, within 60 days after receipt of the petition, file a recommendation with the [C]ommission to grant, grant with conditions, or deny the variance request.”

6. The Department, at page 5 of its Response to Variance Petition, states: “The Department supports the [Variance Request] and recommends its approval.” Further, the Department concludes, at page 7 of its Response to Variance Request: “For the foregoing reasons, the Department recommends that the Commission approve the variance request and require that Petitioner confirm that water quality in RA-3361 and the impoundment system conform to the Commission’s ground water quality standards for nitrate (NO₃N), total dissolved solids (TDS), and chloride (Cl) found at 20.6.2.3 103(A) and (B) NMAC.”

7. 20.1.3.18(B) NMAC provides: “If the [D]epartment recommends granting the variance request, or any part of the variance request, with or without conditions, the [C]ommission shall hold a hearing on those requests recommended for approval.” In turn, 20.1.3.18(C) NMAC in applicable part reads: “If a hearing on a variance petition is required, the hearing shall be held within 90 days after the later of the filing of a [D]epartment recommendation to grant a variance or the filing of a request for hearing by the petitioner, as applicable. The 90-day deadline may be waived upon the filing of a stipulated or unopposed motion prior to the expiration of the deadline.” In this case, the Department recommended that the Commission grant Petitioner’s variance request with a condition.

8. No mention is made in the allegations of the Joint Motion or in its prayer for relief to any stipulation or agreement between the parties concerning waiver of the 90-day deadline, notwithstanding the pertinent language in 20.1.3.18(C)(1) NMAC. However, the parties state in the prefatory paragraph of the Joint Motion signed by Steve Jetter, Sr., on behalf of Petitioner, that “Petitioner agrees to waive the 90-day deadline in which to hold a hearing pursuant to 20.1.3.18(C)(1) NMAC.”

9. In addition to having signed the Joint Motion, the Department through its legal counsel verbally stipulated at the meeting to waiver of the 90-day deadline under 20.1.3.18(C)(1) NMAC.

IT IS THEREFORE ORDERED:

A. The parties’ request for waiver of the 90-day deadline in which to hold a hearing pursuant to 20.1.3.18(C)(1) NMAC is granted.

B. The hearing, as that term is defined in 20.1.37(A)(9) NMAC, on the Variance Request shall be held during the Commission’s regularly scheduled meeting on Tuesday, June 8, 2021,

using a WebEx platform; the hearing may be continued thereafter if the Commission deems it necessary.

C. Public notice of the hearing on the Variance Request shall be given as provided in 20.1.3.16(C) NMAC.

D. The hearing on the Variance Request shall be conducted in accordance with the applicable provisions of the Commission's adjudicatory procedures in 20.1.3 NMAC.

E. Pursuant to 20.1.3.10(B) NMAC, the Commission appoints Gregory Chakalian as the Hearing Officer to conduct the hearing on the Variance Request, and to perform the functions under 20.1.3.10(B)(2) NMAC, and to exercise all powers and duties prescribed or delegated by the Commission under the Water Quality Act, NMSA 1978, Sections 74-6-1 to -17 (1967, as amended through 2019), and 20.1.3 NMAC.

Dated this 18th day of February 2021

gabriel wade

Gabriel Wade, Vice Chair
Water Quality Control Commission

Certificate of Service

I hereby certify that on February 18, 2021 a copy of the foregoing **Corrected Order** was emailed to the persons listed below. A copy will be mailed first class upon request.

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